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Message Text

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ACTION EUR-12

INFO OCT-01 IO-13 ISO-00 CIAE-00 PM-04 INR-07 L-03 ACDA-07
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C O N F I D E N T I A L USNATO 1139

E.O. 11652: GDS
TAGS: NATO, PFOR, PARM, ICRC
SUBJECT: NATO CONSIDERATION OF DRAFT PROTOCOL ON INTERNATIONAL LAW IN ARMED CONFLICT

REF: (A) BONN 02918 (DTG 161719Z FEB 77 NOTAL), (B) USNATO 0862 (DTG 151734Z FEB 77)

SUMMARY: POLAD S AT FEBRUARY 23 AND MARCH 1 MEETINGS WERE UNABLE TO REACH DECISION ON POSSIBLE MANDATE FOR MILITARY COMMITTEE STUDY OF DRAFT PROTOCOL. A REVISED DRAFT MANDATE FOR SUCH A STUDY REMAINS UNDER CONSIDERATION, AND A MAJORITY OF ALLIED REPS FAVORED A NORWEGIAN SUGGESTION THAT NATO DELS DISCUSS MANDATE IN GENEVA BEGINNING MARCH 17. FURTHER DISCUSSION IN POLADS IS TENTATIVELY SCHEDULED FOR MARCH 29. ACTION RQUEST SEE PARA 5 BELOW. END SUMMARY.

1. IN AN EFFORT TO ADVANCE POLADS DISCUSSIONS ON FIRST ADDITIONAL PROTOCOL TO THE GENEVA CONFERENCE, UK DELEGATION, WHICH NOW SUPPORTS INITATING MC STUDY PRIOR CONFIDENTIAL

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TO END OF GENEVA CONFERENCE, HAS CIRCULATED A DRAFT MANDATE FOR THE MILITARY COMMITTEE (MC). UK DRAFT (SEE PARA 4) WHICH IS ELABORATION OF EARLIER FRG SUGGESTED MANDATE (USNATO 0739 DTG 101920 FEB 77), ALSO SEEKS TO TAKE ACCOUNT OF DUTCH CONCERN TO HAVE SUCH A STUDY FOCUS ON ALLIANCE DEFENSE PLANNING BY REFERRING TO "EFFECTS ON FUTURE DEFENSE CAPABILITY". UK DRAFT HAS RECEIVED CONSIDERABLE SUPPORT AMONG POLADS REPS, THOUGH THE DUTCH-- DESPITE THE AMENDMENT DESCRIBED ABOVE-CONTINUE TO BE DISSATISFIED. DEPARTMENT WILL NOTE THAT

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UK DRAFT REQUESTS MC REPORT ON THE PROTOCOL BY
AUGUST 31, IF POSSIBLE. IN POLADS MEETING, INTERNATIONAL MILITARY
STAFF (IMS) REP GAVE PERSONAL VIEW THAT, IF GENEVA
CONFERENCE CONCLUDES BY MID-JUNE, IT SHOULD SUBSEQUENTLY BE POSSIBLE
TO COMPLETE STUDY CLOSE TO AGUST 31 TARGET DATE.

2. AT MARCH 1 POLADS DISCUSSIN, FRG REP SUGGESTED THAT
MC STUDY MIGHT TAKE PLACE IN THREE PHASES, I.E.: (A)
A PRELIMINARY STUDY ON THE BASIS OF PORTIONS OF THE PRO-
TOCOL WHICH ARE ALREADY KNOWN AND AGREED TO; (B) DIS-
CUSSION OF THIS PRELIMINARY STUDY AMONG ALLIED REPS AT NATO
AND IN GENEVA; (C) A FINAL REPORT BY THE MC
FOLLOWING CONCLUSION OF THE GENEVA CONFERENCE. US REP
RESPONDED THAT, IN OUR VIEW, IT WOULD NOT BE PRODUCTIVE
TO BEGIN MC WORK ON THE REPORT UNTIL THE ENTIRE PROTOCOL
WAS COMPLETED SINCE VARIOUS PARTS OF THE PROTOCOL WOULD
AFFECT EACH OTHER.

3. IN ATTEMPT TO REACH CONSENSUS ON NEXT STEPS,
NORWEIGAN REP, SUPPORTED BY DUTCH, ITALIAN AND DANISH
REPS, SUGGESTED THAT ALLIED DELS TO GENEVA CONFERENCE
MEET AS SOON AS POSSIBLE AFTER MARCH 17 TO DISCUSS TEXT
OF DRAFT MANDATE. NORWEGIAN REP HOPED THAT POLADS
COULD RESUME DISCUSSION OF MANDATE -- OLLOWING EXAM-
INATION IN GENEVA -- AT THEIR MARCH 29 MEETING.

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4. FOLLOWING IS TEXT OF DRAFT UK MANDATE.
BEGIN TEXT:
1. IN VIEW OF THE GROWING CONCERN IN THE WORLD
COMMUNITY ABOUT WARS AND ARMED CONFLICTS AND THE
RESULTING INNOCENT VICTIMS THE ALLIED COUNTRIES
HAVE SUPPORTED THE EFFORTS OF THE ICRC TO REAFFIRM AND
DEVELOP THE INTERNATIONAL LAW OF WAR.

2. IN CONSIDERATIONOF THE NEW PROVISIONS ADOPTED
IN THE OMMITTEES OF THE "DIPLOMATIC CONFERENCE ON
REAFFIRMATION AND DEVELOPMENT OF INTERNATIONAL HUMANI-
TARIAN LAW APPLICABLE IN ARMED CONFLICTS" IN 1974-1976
IT SEEMS ADVISABLE TO ALLIED COUNTRIES TO EXAMINE THE
NEW LAW OF WARFARE AND ITS COMPATIBILITY WITH THE
SECURITY INTERESTS OF THE ALLIANCE.

3. IN THIS CONNECTION, THE MILITARY COMMITTEE IS
REQUESTED TO EVALUATE, TAKING ACCOUNT THE VIEWS OF
THE MILITARY AND LEGAL EXPERTS WHO HAVE PARTICIPATED IN
THE DIPLOMATIC CONFERENCE, POSSIBLE SECURITY IMPLICATIONS
FOR THE ALLIANCE, INCLUDING THE EFFECTSON FUTURE DEFENSE
CAPABILITY, OF THE PROVISIONS OF ARTICLES 33-53 OF
ADDITIONAL PROTOCOL I TO THE GENEVA CONVENTIONS.

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4. A REPORT BY THE MILITARY COMMITTEE WHICH SHOULD TAKE FULL ACCOUNT OF THE FINAL FORM OF THE TEXT OF THE PROPTOCOL AS ADOPTED BY THE CONFERENCE IS REQUESTED BY 31 AUGUST 1977. IF POSSIBLE.
END TEXT.

5. COMMENT AND ACTION REQUEST: WE CONTINUE TO SENSE THAT MOST DELEGATIONS DO NOT FEEL A SENSE OF URGENCY ABOUT AN EARLY START TO MC STUDY, AND WULD EXPECT THAT AT MARCH 29 POLADS MEETING, DISCUSSION WILL CONTINUE TO BE DESULTORY. WE WOULD, HOWEVER, APPRECIATE ANY GUIDANCE THAT DEPARTMENT MAY WISH TO PROVIDE IN THE CONFIDENTIAL

LIGHT OF POSSIBLE GENEVA DISCUSSIONS OF DRAFT MANDATE.
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